

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

TYRONE JOHNSON,

PLAINTIFF,

VS.

CITY OF OLYMPIA, ET AL.,

DEFENDANTS.

CASE NO: 3:17-CV-05403-MJP

PARTIES' JOINT PRETRIAL ORDER

I. JURISDICTION

1.1 Jurisdiction is vested in this court by virtue of 28 U.S.C. §1331, this being a civil rights case pursuant to 42 U.S.C. §1983.

II. CLAIMS AND DEFENSES

2.1 The Plaintiff will pursue at trial the following claims: unreasonable search and seizure under the Fourth Amendment, pursuant to 42 U.S.C. §1983.

2.2 The Defendants will pursue the following affirmative defenses and /or claims: Failure to Mitigate Damages.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1 3.1 Plaintiff, Tyrone Johnson, was an employee of CenturyLink, LLC at the time of the
2 incident up until the present day.

3 3.2 At the time of the incident, Defendant, Ryan Donald, was a police officer employed by
4 the City of Olympia Police Department. He is still employed as a police officer by the City of
5 Olympia Police Department.

6 3.3 At the time of the incident, Defendant, George Clark, was a police officer employed by
7 the City of Olympia Police Department. He is still employed as a police officer by the City of
8 Olympia Police Department.

9 3.4 At the time of the incident, Defendant, Jonathan Hazen, was a police officer employed
10 by the City of Olympia Police Department. He is still employed as a police officer by the City
11 of Olympia Police Department.

12 3.5 At the time of the incident, Defendant, Eric Henrichsen, was a police officer employed
13 by the City of Olympia Police Department. He is still employed as a police officer by the City
14 of Olympia Police Department.

15 3.6 At the time of the incident, Defendant, Matthew Renschler, was a police Sergeant
16 employed by the City of Olympia Police Department. He is still employed as a police
17 Sergeant by the City of Olympia Police Department.

18 3.7 On May 27, 2014., Mr. Johnson received a dispatch call, drove his personal vehicle to
19 the CenturyLink building at 2817 Martin Way E., Olympia, Washington, and drove out to the
20 location to complete a job.

21 3.8 Mr. Johnson drove back to the CenturyLink building at 2817 Martin Way E., Olympia,
22 Washington, unlocked the garage bay door and drove the vehicle inside.

23 3.9 Exhibit 7 indicate that Defendant Donald initiated a dispatch call for an unsecured
24 premises on May 28, 2014 at 2:21:03am..

1 3.10 Exhibit 7 indicates that Defendant Hazen reported that he arrived on scene at 2:22:36
2 a.m..

3 3.11 Exhibit 7 indicates that Defendant Henrichsen reported that he arrived on scene at
4 2:22:41 a.m.

5 3.12 Exhibit 7 indicates that Defendant Clark reported that he arrived on scene at 2:29:59.

6 3.13 Some or all of the defendants had flashlights.

7 3.14 Mr. Johnson heard the defendants and was given orders to walk towards the Officers
8 and keep his hands in the air. He was compliant.

9 3.15 One of the officers told Mr. Johnson to turn around and start walking backwards.

10 3.16 One of the officers told Mr. Johnson to kneel.

11 3.17 One of the officers placed Mr. Johnson in handcuffs.

12 3.18 Mr. Johnson was led out of the building and released out of handcuffs and was not
13 arrested.

14 3.19 Defendants determined that Mr. Johnson was a CenturyLink employee.
15

16 **IV. ISSUES OF LAW**

17 The following are Plaintiff's issues of law to be determined by the court:

- 18 1. Whether Defendants may use as a defense for their actions the fact that Plaintiff did not
19 close the garage door to the CenturyLink building?
- 20 2. Whether punitive damages shall be listed on the verdict form and in a jury instruction?
- 21 3. Whether failure to mitigation emotional damages shall be listed on the verdict form and
22 in a jury instruction? The question is whether mitigation is a proper jury instruction for
23 emotional damages in a §1983 case.
24

- 1 4. Whether photographs taken by Defense counsel on June 22, 2018 at 2:00am may be
2 presented to prove the truth of the matter – that the photographs represent what the
3 officers saw on May 28, 2014 or what the lighting was like on May 28, 2014?
- 4 5. Whether Plaintiff will be able to introduce evidence of his L&I claim, including
5 medical records and reports to help prove that 1. He had a documented history of
6 reporting the May 28, 2014 incident to medical professionals, he sought treatment for
7 his damages, he was damaged by the incident and/or he stopped going to therapy
8 because the insurance would not pay for it.

9
10 The following are Defendants' issues of law to be determined by the court:

- 11 1. Should the Jury be instructed on Unreasonable Search and should that claim appear on
12 the verdict form?
- 13 2. Should the jury be instructed on punitive damages and should that question appear on
14 the verdict form?

15
16 If the parties cannot agree on the issues of law, separate statements may be given in the
17 pretrial order.

18 **V. EXPERT WITNESSES**

- 19 (a) Each party shall be limited to one (1) expert witness on the issue of damages and one (1)
20 expert witness on the issue of causation.
- 21 (b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial
22 and the issue upon which each will testify is:

23 (1) On behalf of Plaintiff:

24 a. **Laura Brown, Ph.D., ABPP**

3429 Fremont Pl. N. #319
Seattle, WA 98103

Laura Brown will testify concerning her review of Plaintiff's medical records, Plaintiff's mental and psychological diagnoses, evaluation of Plaintiff, review of the documents discovered in this case to date, a review of Dr. Vandenberg's report, and whether or not Plaintiff suffered damages as a result of the Defendants' alleged conduct.

b. **Gregory Gilbertson**
4722 Snow Grass Place NE
Olympia, WA 98516-6258

Gregory Gilbertson will testify about police misconduct, tactics used by the City of Olympia Police Officers, the use of force, the use of force reporting, a review of Mr. Selig's report, a review of the depositions of the police officers and police chief,

(2) On behalf of Defendants:

a. Jeff Selleg
200 SE Phillips RD
Shelton, WA 98584

Mr. Selleg will testify concerning police practices consistent with his report.

b. Dr. Russell Vandenberg
11201 SE 8th St., Suite 105
Bellevue, WA 98004

Dr. Vandenberg will testify concerning plaintiff's claimed emotional damages from this incident and failure to mitigate consistent with his report.

VI. OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

1. Donald Anderson
[Address will be provided when obtained]
(360)791-5127

1 Donald Anderson is a rebuttal witness who can testify about CenturyLink policies and
2 his knowledge of the incident on May 28, 2014. Plaintiff's counsel makes this rebuttal witness
3 disclosure to provide Defense counsel with an opportunity to speak with Mr. Anderson over the
4 phone, which is the way that Plaintiff's counsel has first interviewed the witness on October 3,
5 2018. Defendants will object to the calling of Mr. Anderson unless his testimony is limited to
6 proper rebuttal.

7 2. Thomas Danner, Ph.D.

8 Dr. Danner will testify regarding his treatment of Mr. Johnson and Mr. Johnson's
9 damages from the incident. Defendants will object to testimony that goes beyond treatment of
10 Mr. Johnson. Dr. Danner was never disclosed in accordance with FRCP 26(a)(2) to offer
11 testimony beyond treatment evidence.

12 3. Michael Friedman, M.D.

13 Dr. Friedman will testify regarding Defendants' claim that Mr. Johnson failed to
14 mitigate his damages, his observations of Mr. Johnson, that Mr. Johnson's damages are
15 causally related to the incident described in the Complaint, and the Independent Medical
16 Examination Reports he drafted about Mr. Johnson's damages dated 9/29/16 and 9/20/18 that
17 were related to his L&I claim for worker's compensation damages, which stemmed from the
18 May 28, 2014 incident. Defendants object to Dr. Friedman testifying as an expert on causation
19 when plaintiff has also designated Dr. Brown as an expert on causation. Dr. Friedman was
20 never disclosed in accordance with FRCP 26(a)(2).

21 4. Tyrone Johnson

22 Mr. Johnson has knowledge of the facts related to incident that is at issue in this
23 lawsuit, his claimed damages and that his damages were attributable to the incident.

24 5. Dwight Randolph

1 Dr. Randolph will testify regarding his treatment of Mr. Johnson and Mr. Johnson's
2 damages from the incident. Defendants will object to testimony that goes beyond treatment of
3 Mr. Johnson. Dr. Randolph was never disclosed in accordance with FRCP 26(a)(2) to offer
4 testimony beyond treatment evidence.

5 6. Levi Schlueter

6 1307 Axford Street
7 Raymond, Washington 98577
(360)827-0989

8 Levi Schlueter is a rebuttal witness who can testify about CenturyLink company policy
9 about closing the garage door when working inside the building, and his knowledge of the
10 incident on May 28, 2014. Plaintiff's counsel first communicated with Mr. Schlueter on October
11 1, 2018. Plaintiff's counsel makes this rebuttal witness disclosure to provide Defense counsel
12 with an opportunity to speak with Mr. Schlueter over the phone, which is the way that Plaintiff's
13 counsel has interviewed the witness on October 1, 2018. Defendants will object to the calling of
Mr. Schlueter unless his testimony is limited to proper rebuttal.

14 (b) On behalf of Defendant:

15 1. Officer Ryan Donald

16 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
17 at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
on May 28, 2014. He is expected to testify that his actions were reasonable under the
18 circumstances and consistent with accepted law enforcement standards.

19 2. Officer Jonathan Hazen

20 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
21 on May 28, 2014. He is expected to testify that his actions were reasonable under the
22 circumstances and consistent with accepted law enforcement standards.

23 3. Officer George Clark

24 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
on May 28, 2014. He is expected to testify that his actions were reasonable under the
circumstances and consistent with accepted law enforcement standards.

1 4. Officer Randy Wilson

2 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
3 at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
4 on May 28, 2014. He is expected to testify that his actions were reasonable under the
5 circumstances and consistent with accepted law enforcement standards.

6 5. Officer Eric Henrichsen

7 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
8 at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
9 on May 28, 2014. He is expected to testify that his actions were reasonable under the
10 circumstances and consistent with accepted law enforcement standards.

11 6. Sgt. Matt Renschler

12 This witness has knowledge of the facts related to incident involving Mr. Johnson that is
13 at issue in this lawsuit, as well as damages claimed. He will also testify concerning his actions
14 on May 28, 2014. He is expected to testify that his actions were reasonable under the
15 circumstances and consistent with accepted law enforcement standards.

16 7. Jonnica Elkins

17 Ms. Elkins has knowledge of the meaning of the entries on the CAD report related to
18 this incident. She also has knowledge regarding the lack of any traffic stops by OPD in the
19 period preceding the call regarding an unsecured location at the Century Link address.

20 8. Carl Forsman

21 Mr. Forsman has knowledge of Mr. Johnson's work history and other complaints of
22 discrimination based on his race. He also has knowledge of work records from the night of the
23 incident. Finally, he has knowledge of physical features of the Olympia Century Link building
24 and its lighting. He also has knowledge of Century Link policy and procedure regarding the
leaving of garage doors open at night and that Mr. Johnson's actions in that regard violated
company policy.

Plaintiffs and Defendants reserve the right to call rebuttal witnesses, witnesses listed in
initial disclosures, supplemental initial disclosures, and any witnesses on plaintiff's and
defendants' witness list.

VII. EXHIBITS

Identify each exhibit with a number, which becomes the number for the exhibit at the trial and appears on the exhibit tag.

Plaintiff's Exhibits:

Ex. No.	Document Description	Bates No/ Depo Ex No	Admiss Stip. Not Disputed	Auth. Stip. Admiss Disp.	Auth & Admiss Disp	Admitted
001.	Drawing of Century Link building by Tyrone Johnson in his deposition Ex 1	1 pg	x			
003.	In Service Training for Ryan Donald	69 pgs		x		
005.	Ryan Donald Photograph	1 pg		x		
006.	I Have a Dreamsicle twitter photo	1 pg			x	
007.	Detailed History for Police Event #141480051 CAD	2 pgs	x			
008.	Overhead Google Maps 2817 Martin Way E	1 pg	x			
010.	CenturyLink Sign on Right side of building	1 pg	x			
011.	Calls for Service Report 5/28/2014 2:21am	1 pg			x	
012.	Olympia Police Department Personnel Corrective Action Form November 29, 2012 Ryan Donald arrested wrong person	1 pg		x		
013.	Olympia Police Department Operations Memorandum from Sgt Allen 4/13/13 Ryan Donald did not wait for backup	2 pgs		x		
014.	General Order 1.4 USE OF FORCE Last Revised 02-01-2017	12 pgs		x		
015.	Emails with Connie Cobb, Mathew Renschler and Ryan Donald re Request for Comments attaching	15 pgs		x		

	Sedgwick Lien Notice					
016.	Tyrone Johnson's Qwest Communications Vendor ID for Department of Defense and ID Badge for CenturyLink	1 pg		x		
017.	Tyrone Johnson's Tort Claim dated June 3, 2015 and City's Response	6 pgs		x		
018.	Photo of back of CenturyLink Van	1 pg				
019.	Photo of angled front left and side of CenturyLink van	1 pg				
020.	Probationary Officer Progress Report April-May 2013	2 pgs		x		
021.	Charges by Ryan Donald of Black individuals Public Records Results	4 pgs			x	
022.	Olympia Police Department Field Training Program Review of officer Donald 4/30/13	2 pgs		x		
023.	Olympia Police Training Officer Program 9/1/12-9/5/12	10 pgs		x		
025.	Fax from Carl Forsman dated 6/9/2014 with Tyrone Johnson's Dolog/Timesheet for 5/27/14 with his dispatch time of 10:33pm and log out time of 2:22am	4 pgs			x	
026.	Photograph of Matthew Renschler	1 pg		x		
027.	Photograph of Jonathan Hazen	1 pg		x		
028.	Photograph of George Clark	1 pg		x		
029.	Photograph of Eric Henrichsen	1 pg		x		
030.	Photograph of Randy Wilson	1 pg		x		
031.	Matthew Renschler Training	126 pgs		x		
033.	Oath of Office	1 pg		x		
034.	Randy Wilson Training	114 pgs		x		

035.	Olympia Police Department Internal Investigation Report Allegation of Excessive Use of Force against Randy Wilson	30 pgs		x		
037.	Use of Force Reporting Issue Date: 11/1/08 (duplicative with Exhibit 045)	1 pg		x		
038.	Olympia Police Department Tactical Guideline 2/7/2009	2 pgs		x		
039.	Allegation of Serious Employee Misconduct	16 pgs		x		
040.	RCW 9A.16.020 Use of Force – When Lawful	1 pg		x		
041.	May 2014 Gold Team	1 pg		x		
042.	Jonathan Hazen Performance Review and other personnel documents	58 pgs		x		
043.	Basic Handcuffing Concepts – OPD Defensive Tactics	2 pgs		x		
044.	Jonathan Hazen Training Reports	61 pgs		x		
046.	Olympia Police Department General Order: Temporary Detentions	1 pg		x		
047.	Jonathan Hazen’s Final Evaluation done by Randy Wilson on 3/13/14	7 pgs		x		
048.	Olympia Police Department Field Training Program Board of Evaluators Review of Jonathan Hazen on 3/27/14	2 pgs		x		
049.	Olympia Police Department Police Training Program for Jonathan Hazen 6/2/14 – 6/30/14	5 pgs		x		
051.	Photograph of Tyrone Johnson in front of office door	1 pg		x		
052.	Photograph of Tyrone Johnson in CenturyLink building	1 pg		x		
053.	Deposition Transcript of George Clark			x		
054.	Deposition Transcript of Ryan			x		

	Donald					
055.	Deposition Transcript of Jonathan Hazen			x		
056.	Deposition Transcript of Eric Henrichsen			x		
057.	Deposition Transcript of Aaron Jelcick			x		
058.	Deposition Transcript of Matthew Rensler			x		
059.	Deposition Transcript of Randy Wilson			x		
060.	Deposition Transcript of Laura Brown			x		
061.	Laura Brown Deposition Ex 1 Report			x		
062.	Laura Brown Deposition Ex 2 Sound Family Medicine 9/26/2013	3 pgs		x		
063.	Laura Brown Deposition Ex 3 Sound Family Medicine 10/30/2013			x		
064.	Laura Brown Deposition Ex 4 Sound Family Medicine 12/4/2013			x		
065.	Laura Brown Deposition Ex 5 Sound Family Medicine 01/02/2014			x		
066.	Laura Brown Deposition Ex 6 Sound Family Medicine			x		
067.	Laura Brown Deposition Ex 7 Sound Family Medicine 02/13/14			x		
068.	Laura Brown Deposition Ex 8 Dwight Randolph Personal Progress Notes 10/24/2013 – 2015 Dates are incorrect			x		
069.	Laura Brown Deposition Ex 9 Thomas Danner PhD Intake Summary			x		
070.	Laura Brown Deposition Ex 10 Amee J. Epler, PhD Progress Notes 9/30/2014			x		
071.	Carl Forsman Deposition Transcript			x		

072.	Carl Forsman Deposition Exhibit 2 Hand-drawn map of CenturyLink Building			x		
073.	Tyrone Johnson Deposition Transcript			x		
075.	Deposition of Gregory Gilbertson taken on 5/18/18			x		
076.	Gilbertson's Report dated January 25, 2018			x		
077.	Medical Records for Claim Redacted			x		
078.	Johnson Statement to Sedgwick on 6/6/14			x		
079.	IME Tyrone Johnson 9/29/2016 by Michael Friedman, D.O.			x		
080.	IME Tyrone Johnson 9/20/2018 by Michael Friedman, D.O.			x		
081.	Photograph of Shop Area Where Johnson's Van Was Parked at CenturyLink Building 2817 Martin Way E			x		
082.	Photograph of Where Mr. Johnson Put His Hands Up at CenturyLink Building 2817 Martin Way E			x		
083.	Photograph of Access Door to Shop Area at CenturyLink Building 2817 Martin Way E			x		
084.	Photograph of Where Johnson was Standing When Police Confronted Him at CenturyLink Building 2817 Martin Way E			x		
085.	Photograph Across the Street from CenturyLink Building 2817 Martin Way E			x		
086.	Photograph of How Johnson Knelt Down at CenturyLink Building 2817 Martin Way E			x		
087.	6/5/15 Email from Steve Nelson regarding Tort Claim.	10 pg		x		
088.	9/6/18 Letter from Sedgwick			x		

	for L&I claim – Notice of Cancellation					
090.	Police Guild Agreement City Olympia & Olympia Police Guild			x		
091.	Control Holds Takedown			x		
092.	Screen Shot from OPD General Order May 2014 Last Revised 11_19_2012			x		
093.	Use of Force Revised 11_19_2012 City of Olympia General Order 1.3 Version May 2014			x		
094.	Thurston County 911 Communications Confidential Report				x	
095.	Thurston County 911 Radio Communications Manual - October 2013				x	
096.	Donald whereabouts 5_27_2014 to 5_28_2014			x		
097.	Personnel Corrective Action Form for Ryan Donald, Policy Violation General Order 26.1.1III.J, - Courtesy			x		
098.	News Release Thurston County Sheriff 5_26_2015 re Ryan Donald Shooting				x	
099.	9_30_2015 Olympia Police Department Memorandum from Aaron Jelcick re Shooting Review Board			x		
100.	Review-Board-Inquiry into shooting Summary trauma of the event			x		
101.	Defendants' Responses to Plaintiff's 1 st set of Discovery			x		
102.	Defendants' Responses to Plaintiff's 2 nd set of Discovery			x		
103.	Plaintiff's medical records Dr. Danner			x		
104.	12/11/14 Sedgwick Labor and Industries Hudak IME Approved by Dr. Danner			x		

106.	10/1/2014 Letter to Tyrone Johnson re Absence Beginning 6/9/14	1 pg		x		
107.	Medical Records Submitted to L&I			x		
108.	6/3/14 Mental Health Evaluation by Randolph			x		
109.	6/11/14 Mental Health Evaluation by Randolph			x		
110.	6/13/14 New Provider Letter Randolph			x		
111.	2/13/14 Mental Health Evaluation			x		
113.	Emails with Ryan Donald, Matthew Renschler and Connie Cobb re statements			x		
114.	Ryan Donald Facebook Posts				x	
115	Ryan Donald Application Materials			x		
116	CV of Laura Brown			x		
117	CV of Gregory Gilbertson			x		
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Defendants' Exhibits:

Ex. No.	Document Description	Bates No/ Depo Ex No	Admiss Stip. Not disputed	Auth. Stip. Admi ss. disp.	Auth & admi ss. disp	Admitted
200	CAD Report for Incident 141480051		x			
201	Photo – Exterior Century Link Building				x	
202	Photo – Exterior Century Link Building				x	
203	Photo – Interior Century Link Building				x	

1	204	Photo – Interior Century Link Building				x	
2	205	Photo – Interior Century Link Building				x	
3	206	Photo – Interior Century Link Building				x	
4	207	Photo – Interior Century Link Building				x	
5	208	Photo – Interior Century Link Building				x	
6	209	Photo – Interior Century Link Building				x	
7	210	Photo – Interior Century Link Building				x	
8	211	Photo – Interior Century Link Building				x	
9	212	Photo – Interior Century Link Building				x	
10	213	Photo – Radar Gun showing interior width of building				x	
11	214	Photo – Radar Gun showing interior width of building				x	
12	215	Google Image Exterior of Century Link Building		x			
13	216	Google Image Exterior of Century Link Building			x		
14	217	Google Image Exterior of Century Link Building			x		
15	218	Dwight Randolph Progress Notes 2/6/2014				x	
16	219	Dwight Randolph Progress Notes 1/30/2014				x	
17	220	Dwight Randolph Progress Notes 1/9/2014				x	
18	221	Dwight Randolph Progress Notes 12/19/2013				x	
19	222	Dwight Randolph Progress Notes 12/5/2013				x	
20	223	Dwight Randolph Progress Notes 11/21/2013				x	
21	224	Dwight Randolph Progress Notes 10/31/2013				x	
22	225	Dwight Randolph Progress Notes 10/24/2013				x	
23	226	VA Progress Notes				x	
24	227						

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(No party is required to list any exhibit which is listed by another party, or any exhibit to be used for impeachment only. See LCR 16 for further explanation of numbering of exhibits.

VIII. ACTION BY THE COURT

(a) Trial briefs shall be submitted to the court on or before October 3, 2018.

(b) Jury instructions requested by either party shall be submitted to the court on or before October 3, 2018. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before October 3, 2018.

(c) The pretrial conference shall be held on October 5, 2018 at 9:00 a.m..

(d) (Insert any other ruling made by the court at or before pretrial conference.)

(e) This case is scheduled for trial before a jury on October 15, 2018 at 9:00am.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED: October 9, 2018



Marsha J. Pechman
United States District Judge

1 DATED this 3rd day of October 2018.

2 BEVERLY GRANT LAW FIRM, P.S.

3 By: /s/ Elizabeth Lunde

4 Beverly Grant, WSBA No. 8034

5 Elizabeth G. Lunde, WSBA No. 51565

6 Attorneys for Plaintiff

7 LAW, LYMAN, DANIEL, KAMERRER

8 & BOGDANOVICH, P.S.

9 By: /s/ John Justice

10 John E. Justice, WSBA No. 23042

11 Attorneys for Defendants